Affordable Dwelling Unit Monitoring and Procedures Manual

City of Charlottesville, Virginia

DRAFT

March 29, 2023

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Note on DRAFT document:

The following document is a first draft subject to continued revisions as we work towards a final program suitable for adoption and implementation. Many of the tables contained in this document will need to be updated to reflect the most current information available at the time of adoption. Further, staff will update this draft as the drafting of the Zoning Ordinance continues to address consistency on enforcement provisions and the treatment of ownership affordable units.

PART I – Introduction

The creation of an Affordable Dwelling Unit (ADU) ordinance was a recommendation of the Affordable Housing Plan, completed in 2021, which recommended new zoning tools to support Charlottesville's affordable housing needs through the creation and preservation of affordable housing units that the market would not otherwise build.

The specific tools of the Affordable Dwelling Unit ordinance, as incorporated in the Charlottesville Zoning Code, include:

1. **Affordable Dwelling Unit Requirement**: Requiring residential development with a certain number of units to set-aside new Affordable Dwelling Units built to be priced affordably for households at designated Area Median Income (AMI) levels; and
2. **Affordable Dwelling Unit Bonus**: Offering incentives to residential development that include affordable housing to set-aside new Affordable Dwelling Units built to be priced affordably for households at designated AMI levels, supported by a density bonus.

The Affordable Dwelling Unit ordinance is included in the Charlottesville Zoning Code and is linked here [hyperlink to be added].

This Manual sets forth the guidance, operational procedures, and implementation protocol governing the administration of the Affordable Dwelling Unit ordinance. In the event of any inconsistency between this Manual and the Charlottesville Zoning Code, the Zoning Code rules.

To reflect evolving housing market conditions over time, the ADU ordinance and this Manual will be evaluated and updated by the City of Charlottesville Office of Community Solutions (OCS) every two years.

Capitalized terms used in this Manual are defined in the Appendix of this Manual.

PART II – Affordable Dwelling Unit Guidelines

2.1 Affordable Dwelling Unit Requirement

The City recognizes that increasing the number of ADUs and targeting deeper affordability in a housing development reduces the rental income of the project and changes the financing of the project. The operating costs for the project remain constant while the project receives less in revenue to cover those operating costs. To ensure that projects that include ADUs are financially feasible and get built, ordinance requirements are calibrated to market conditions. The feasible level of affordability for the ADU ordinance was determined based on metrics including typical yield on cost and multiple assumptions for a market-rate housing developer in Charlottesville.

The applicability and requirements of the ADU ordinance are outlined in the Charlottesville Zoning Code.

The set-aside ADUs must be priced using the AMI levels as defined by the U.S. Department of Housing and Urban Development (HUD) and applied based on the requirements set forth by the City of Charlottesville and detailed in the *Calculating Affordable Rents* section of this Manual.

2.2 In-Lieu Fees

The option to pay in-lieu fees provides developers with an alternative to on-site construction of affordable dwelling units. An in-lieu fee is a payment equal to the cost of complying with the ADU ordinance, or the difference in projected revenue due to charging affordable versus market rate rent on ADUs. Developers may satisfy the ADU ordinance requirements by paying an in-lieu fee to the Charlottesville Affordable Housing Fund (CAHF).

A developer may build a portion of the required ADUs and provide a payment in lieu of the remainder of the required ADUs.

The in-lieu fee is equal to the difference in supportable financing among market-rate projects and those complying with the ADU ordinance by building ADUs on site. In-lieu fees are levied on a per-unit basis and calculated based on the loss to operating income (NOI) plus the cost to the Property Owner to administer ADUs.

The in-lieu fee per ADU are detailed below and are on file with City of Charlottesville Neighborhood Development Services (NDS) and OCS. Reassessment of in-lieu fees will be included in the update to the ADU ordinance and this Manual, scheduled to occur every two years.

Figure 1: In-Lieu Fee per Affordable Dwelling Unit

Unit Type	Rental	Owner-Occupied
Studio 60% AMI	$195K	*No studio units*
1-bed 60% AMI	$260K	$165K
2-bed 60% AMI	$360K	$230K
3-bed 60% AMI	$405K	$435K

[1] Effective through December 31, 2023

In-lieu fee amounts will escalate by 3% annually upon the effective date of the Charlottesville Zoning Code, to take effect January 1 of each year.

2.3 Affordable Dwelling Unit Bonus

All projects providing residential units may choose to provide ADUs beyond what is required by the ADU ordinance. These projects are eligible for bonus incentives that offset the cost burden of constructing and maintaining ADUs.

The requirements that must be met for projects to receive bonuses are outlined in the Charlottesville Zoning Code.

2.4 Calculating Affordable Rents

The applicable affordability requirements are outlined in the Charlottesville Zoning Code.

The City bases its determination on maximum monthly rent for ADUs using the most recent HUD guidance as published annually for Charlottesville based on bedroom count. If any discrepancies arise, the rent limits indicated by HUD will take precedence over other guidance and limits.

Figure 2: Maximum Monthly Rent Considered Affordable

Number of Bedrooms	30% AMI	50% AMI	60% AMI	80% AMI	Fair Market Rent
Studio	$551	$917	$1,101	$1,468	$1,024
1	$591	$983	$1,180	$1,572	$1,063
2	$708	$1,180	$1,416	$1887	$1,264
3	$818	$1,362	$1,635	$2,180	$1,562
4	$912	$1,520	$1,824	$2,432	$1,959

[1] Effective October 1, 2021
[2] Assumes tenants pay no more than 30% of income in housing costs and utilities.
Source: U.S. Department of Housing and Urban Development (US HUD)

The City of Charlottesville OCS will update maximum pricing for ADUs within one month of the release of updated income limits by HUD.

If the tenant is responsible for the cost of utilities, the monthly utility allowance is deducted from the maximum monthly rent summarized above. Other mandatory fees charged for use of the property must also be deducted from the maximum monthly rent. Utility allowances for ADUs will be based on the Utility Allowance Schedule published by HUD. If any discrepancies arise between **Figure 3** and the utility allowance schedule published by HUD, the rent limits indicated by HUD will take precedence.

Current utility allowances through July 1, 2023 are provided below. The City of Charlottesville OCS will update utility pricing within one month of the release of the updated utility allowance schedule by HUD.

Property Owners will be required to update utility data pricing within one month of the release of updated information published by HUD in the same calendar year.

Figure 3: Utility Allowance Schedule

		Bedroom Count				
Utility	**Usage**	**0-BR**	**1-BR**	**2-BR**	**3-BR**	**4-BR**
Appliance	Range/Microwave	$2	$2	$2	$2	$2
	Refrigerator	$3	$3	$3	$3	$3
Bottled Gas	Cooking	$11	$15	$19	$23	$29
	Home Heating	$61	$85	$109	$133	$169
	Water Heating	$27	$37	$48	$58	$74
Electricity	Cooking	$4	$5	$6	$8	$10
	Cooling (A/C)	$7	$9	$12	$14	$18
	Home Heating	$23	$32	$41	$51	$64
	Other Electric	$14	$19	$24	$30	$38
	Water Heating	$12	$16	$21	$25	$32
Natural Gas	Cooking	$2	$2	$3	$3	$4
	Home Heating	$8	$11	$14	$17	$21
	Water Heating	$3	$4	$5	$7	$8
Oil	Home Heating	$43	$60	$77	$95	$120
	Water Heating	$19	$26	$33	$41	$52
Sewer		$23	$32	$41	$50	$63
Trash Collection		$14	$14	$14	$14	$14
Water		$20	$28	$36	$44	$56

[1] Effective July 1, 2022 to July 1, 2023
Source: Virginia Housing

PART III – Permitting and Approvals

3.1 Affordable Dwelling Unit Certification

Projects are required to receive Affordable Dwelling Unit Certification to ensure compliance with the ADU ordinance throughout the development process. The certification process will be integrated with three existing steps in the development review process to streamline review:

- Site Plan Approval
  - Developer applies for and receives **Affordable Dwelling Unit Certification**
- Building Permit Issuance
  - Developer reconfirms information included in previously approved **Affordable Dwelling Unit Certification**
  - **Deed restriction** for affordability recorded in Charlottesville Land Records
  - Developer submits **Marketing Plan** for ADUs included in project
- Certificate of Occupancy Issuance
  - Developer reconfirms information included in previously approved **Affordable Dwelling Unit Certification**

Developer will be required to comply with the ADU ordinance at each step of the approvals process in order to receive the corresponding approval or permit. Each step of the approvals process is set forth in the remainder of this section.

3.2 Development Application and Site Plan Review

Any project with residential units is required to complete an Affordable Dwelling Unit Certification Application, whether or not the project is subject to an Affordable Dwelling Unit requirement. The Affordable Dwelling Unit Certification Application is to be submitted in conjunction with development plans for Site Plan Review.

In the Application, the developer must provide information on planned ADUs for the project or planned in-lieu fee payment, based on the ADU ordinance requirements in the Charlottesville Zoning Code and this Manual. City of Charlottesville OCS will review the Application to confirm all requirements are met, including the number of ADUs, level of affordability, and relevant unit characteristics. If the developer plans to provide an in-lieu fee payment, City of Charlottesville OCS will confirm the total in-lieu fee amount aligns with the requirements of the Charlottesville Zoning Code and this Manual.

For developers requesting an Exemption from the ADU ordinance, they will still be required to complete an Affordable Dwelling Unit Certification Application. On the Application, developers can provide a claim for Exemption, which will be evaluated for approval by City of Charlottesville OCS.

A developer must have an Affordable Dwelling Unit Certification from City of Charlottesville OCS prior to receiving Site Plan Approval.

3.3 Building Permit

When a developer applies for a building permit with the City, they will resubmit the project's Affordable Dwelling Unit Certification Application and note any changes from the Site Plan Approval. If changes are made, developers will provide details on the change and City of Charlottesville OCS will confirm that the project plans meet the ADU ordinance requirements prior to a building permit being issued.

Any required deed restrictions must be filed in the Charlottesville Land Records prior to obtaining a building permit.

Developers who choose to make an in-lieu fee payment instead of providing ADUs on-site, must submit the payment to the Charlottesville Affordable Housing Fund (CAHF) prior to obtaining a building permit.

A developer must submit a Marketing Plan [hyperlink to be added] to City of Charlottesville OCS at least 6 months prior to construction completion to gain approval to begin lease up prior to building completion. The Marketing Plan should include the developer's strategy for connecting prospective tenants to the project's ADUs and processes for screening prospective tenants. The Marketing Plan must state clearly that the developer will not discriminate on the basis of income source and that any resident with a Housing Choice Voucher or other type of voucher is welcome to apply. If a project has already been exempted from providing ADUs during the Site Plan Approval stage, the developer is not required to resubmit an Affordable Dwelling Unit Certification Application unless the project has changed so that it is now required it to meet ADU requirements.

3.4 Certificate of Occupancy

If a project has already been exempted from providing ADUs during the Site Plan Approval or Building Permit stage, the developer is not required to resubmit an Affordable Dwelling Unit Certification Application unless the project has changed so that it is now required it to meet ADU requirements.

PART IV – Tenant Selection & Protections

4.1 Administration of Tenant Selection

Developers will be responsible for administering the tenant selection process for ADUs, including the marketing, screening, and recertification of tenants. A developer may choose to contract marketing, tenant screening, and tenant approval of ADUs to a third-party company. All fees incurred from third-party support will be the responsibility of the developer. Developers must identify any planned third-party support within their Marketing Plan submitted as part of Affordable Dwelling Unit Certification during the development approvals process.

Regardless of status, developers and property owners remain liable for non-compliance and subject to remedial actions.

4.2 Tenant Qualification Criteria

Income Limits

To determine income-eligible households, the City will use the most recent household income limits as published annually by HUD based on household size. Income limit area definitions are typically updated annually by HUD each April. City of Charlottesville OCS will update income limits for tenants eligible for ADUs within one month of the release of updated income limit and utility allowances by HUD (typically June).

Income Limits for ADUs will be based on the income limits published by HUD. If any discrepancies arise between **Figure 4** and the income limits published by HUD, the rent limits indicated by HUD will take precedence.

Figure 4: City of Charlottesville Area Median Income Limits (2022)

	Household Size			
Income Level	**1**	**2**	**3**	**4**
30% AMI	$19,680	$22,500	$25,320	$28,110
50% AMI	$32,800	$37,500	$42,200	$46,850
60% AMI	$39,360	$45,000	$50,640	$56,220
80% AMI	$52,480	$60,000	$67,520	$74,960
100% AMI	$65,590	$74,960	$84,330	$93,700

Source: HUD

Property Owners may not refuse to accept rental subsidies from prospective tenants. Rental subsidies include, but are not limited to, Housing Choice Vouchers, Tenant Protection Vouchers, or locally administered vouchers.

For ADUs occupied by a Housing Choice Voucher Holder, Property Owners will be entitled to current Fair Market Rent published by HUD **(Figure 5)**, though the tenant will be responsible only for the determined share of rent based on their income. Property Owners must provide City of Charlottesville OCS with a copy of the executed Request for Tenancy Approval (RTA) form [hyperlink to be added] within 7 days of lease signing.

Figure 5: City of Charlottesville Housing Choice Voucher Payment Standard (2022)

Dwelling Unit Size				
Studio	1-bed	2-bed	3-bed	4-Bed
$1,228	$1,275	$1,516	$1,874	$2,350

Source: HUD

Determining Household Income

Household incomes for ADU applicants must be determined in accordance with the *Internal Revenue Code Section 42, Low-Income Housing Credit* Guide and 24 CFR 5.609.

Annual compliance documentation will be based on the applicant's income from the past year. Assumptions about bonuses, overtime, or other speculative projections of income will be based on what was earned in the previous year, unless clear documentation is presented to confirm a variation.

The Property Owner is permitted to deduct projected losses in income from the previous year when major changes in life circumstances occur since the applicant's last year of employment. Life circumstance changes include retirement, job loss, or disability or death of a wage earner. Supporting documentation must be submitted to City of Charlottesville OCS.

4.3 Annual Recertification of Tenant Qualification

Prior to the lease renewal of an ADU, the Property Owner must recertify with the tenant that their household meets the eligibility and household size requirements. The same verification process and documentation will occur as with the initial lease up of the ADU. Unless the Property Owner can substantiate to City of Charlottesville OCS claims that the tenant has violated terms of the lease or is refusing to adequately comply with the recertification process, no other households may be considered to lease the ADU unless the current tenant chooses not to renew their lease.

After the first 12 months of occupying an ADU, the gross household income may increase up to a maximum 100% of AMI, adjusted for Household size. If upon recertification the Household's income exceeds 100% of AMI, the Household must vacate the ADU within 90 calendar days.

The Property Owner must collect and compile the necessary recertification documentation. The Property Owner must maintain records of the recertification process and submit documentation to the City of Charlottesville OCS as set forth in the *Annual Monitoring* section of this Manual.

Housing Choice Voucher holders must be recertified by the third-party contractors managing tenant selection for voucher priority units. All rules applying to Voucher holders as part of the HCV program will still apply to voucher holders occupying ADUs.

4.4 Rent Increases

Property Owners are allowed to increase rents for ADUs no more than once in a 12-month period up to the Maximum Allowable Rent, as identified in **Figure 2**. Property Owners must not increase rent for an ADU more than that allowable by the annual change in the AMI, as identified by HUD and published by the City of Charlottesville NDS and OCS. Property Owners must follow all applicable federal, state, and local laws when increasing rent.

4.5 Tenant Protections

The marketing and applicant screening of ADUs must be in compliance with all applicable federal, state, and local laws related to Fair Housing and must not exclude or discriminate against any persons on the basis of religion, race, national origin, sex or gender identity, sexual orientation, health or disability status, familial status, English proficiency, and lawful sources of income. Additionally, the marketing and applicant screening of ADUs must not exclude or discriminate against any person on the basis of citizenship.

Property Owners are required to use good faith efforts in marketing, tenant selection, recertification, and other administrative processes to engage income-qualified households including Black, Indigenous, and People of Color as well as other community members to benefit from affordable housing assistance. This includes, but is not limited to, engagement and outreach members of underserved groups identified by the Charlottesville Affordable Housing Plan.

Part V – Monitoring and Enforcement

5.1 Annual Monitoring

To determine compliance with the ADU ordinance, Property Owners are required to provide information and documentation deemed necessary by City of Charlottesville OCS annually by July 1st each calendar year including the Charlottesville Affordable Dwelling Unit Compliance Form [hyperlink to be added].

City of Charlottesville OCS will oversee the monitoring of compliance and review all documentation submitted for ADUs. At its discretion, City of Charlottesville OCS and other City departments may require additional documentation related to ADU compliance. The City will not consider requests for subordination, capital improvements, title change, or other requests if a Property Owner is non-compliant with any ADU ordinance provision.

The City reserves the right to inspect ADUs to ensure maintenance of ADUs meets acceptable standards of health and safety, and that they remain comparable with market-rate units in the same project.

5.2 Noncompliance / Violations

Without limitation on any other rights of the City, in the event there is a violation of any conditions contained within the ADU ordinance or this Manual, the City may take any one or combination of the steps identified below to ensure compliance.

Development Approvals

During planning and construction of a project, developers found to be noncompliant with the terms of the ADU ordinance or this Manual may be subjected to the revocation of the Project's Affordable Dwelling Unit Certification, or withholding of Site Plan Approval, Building Permit, Certificate of Occupancy, or other development approvals required to allow construction or occupation of a project.

In any instance of non-compliance, the developer will have 15 days to comply and provide documentation to the City before penalties are applied. No additional permits, certifications or approvals will be provided until City of Charlottesville OCS has determined that the project complies with the ADU ordinance or this Manual.

Operations

Upon the completion of a new project and issuance of a Certificate of Occupancy, Property Owners may be found noncompliant with the ADU ordinance or this Manual under the following conditions:

- Renting an ADU to an ineligible tenant, or renting a Housing Choice Voucher priority unit to an ineligible tenant without approval from the City;
- Charging an incorrect rental amount, including utility allowances;
- Failure to maintain an ADU or Housing Choice Voucher priority unit to acceptable levels of health and safety and comparable with market-rate units in the same project.

Noncompliance will result in the imposition of fines and penalties on the Property Owner and other affiliated entities from City of Charlottesville OCS and other City departments. Fines and penalties for operational noncompliance may include:

- For renting to an ineligible tenant or inadequately maintaining an ADU, daily fines of up to $100 per noncompliant ADU for the period of noncompliance;

- For charging an incorrect rental amount, payment of monetary damages to the City in an amount that is triple the difference between the required rent and the rent being charged for the period of noncompliance; and
- Any and all legal expenses incurred by the City.

All monetary fines collected by the City for ADU noncompliance will be placed in the CAHF to support housing affordability initiatives in Charlottesville.

APPPENDIX: Definitions

AFFORDABLE DWELLING UNIT – Residential unit which is restricted for occupancy by households that have a combined total annual income for all members that does not exceed a designated Area Median Income (AMI) as defined by HUD. Occupant(s) must pay no more than 30 percent of their income for gross housing costs, inclusive of utilities. This term refers to the broad classification and should not be confused with more specific terms that define different income divisions.

AFFORDABLE DWELLING UNIT CERTIFICATION – An Affordable Dwelling Unit Certification ("Certification") is required for all projects with residential development to ensure they include Affordable Dwelling Units as required by the Charlottesville Zoning Code. Applications for Certification must be submitted to City of Charlottesville OCS as part of their initial development application to the City and no development approvals will be provided without Certification.

AREA MEDIAN INCOME (AMI) – Median income, by household size, for the City of Charlottesville, as adopted by the U.S. Department of Housing and Urban Development (HUD) and defined in the Charlottesville HUD Metro Fair-Market Rent Area (HMFA).

AVERAGE GROSS FLOOR AREA PER DWELLING UNIT –The gross floor area of the principal building or buildings divided by the total number of housing units in the building(s).

CHARLOTTESVILLE AFFORDABLE HOUSING FUND (CAHF) – A locally-designated and controlled fund to pay for affordable housing development and programs.

COST BURDEN – Under a standard set by the U.S. Department of Housing and Urban Development, a household is considered cost-burdened when it spends 30% or more of its income on gross housing costs, whether for renter or ownership housing.

DEED RESTRICTION – Legal conditions attached to the ownership of land which dictates requirements imposed on the land; with regard to Affordable Dwelling Unit requirements, these requirements pertain to developing and maintaining Affordable Dwelling Units.

DEVELOPER – Owner or person managing the development of a Project.

EXEMPTIONS – An agreement allowing a Project to opt out of providing Affordable Dwelling Units due to defined proper characteristics (e.g., Project size, location, or grandfathering status).

HOUSING CHOICE VOUCHER (SECTION 8 VOUCHER) PROGRAM – Federal government housing assistance program which allows for low-income families, the elderly, and the disabled to afford decent and safe rental housing. Participants in the tenant-based voucher program are issued a rental voucher, which can be used in the private market for rental assistance. No Project-based voucher units are included as part of Affordable Dwelling Unit development.

IN-LIEU FEE – Fee paid by developers in place of providing Affordable Dwelling Units on-site as part of a project. Funds generated by the in-lieu fee are put into the Charlottesville Affordable Housing Fund to support affordable housing programs and development throughout the City. The price of in-lieu fees charged to a developer are based on the number of bedrooms in required units and if the unit is to be rented or sold.

INCOME LIMITS – The maximum amount of income a household can earn to qualify for an Affordable Dwelling Unit.

MARKETING PLAN – Document detailing a developer's strategy for attracting and screening prospective tenants to the projects Affordable Dwelling Units.

NEIGHBORHOOD DEVELOPMENT SERVICES (NDS) – City department which oversees planning and zoning in Charlottesville, including the Charlottesville Zoning Code requirements.

OFFICE OF COMMUNITY SOLUTIONS (OCS) – City agency overseeing the design and implementation of housing programs and enforcement of the City's housing code. Office of Community Solutions oversees the administration and compliance with the Affordable Dwelling Unit ordinance, including reviewing proposed Projects, issuing Affordable Dwelling Unit Certifications, and ensuring operational compliance with the Affordable Dwelling Unit ordinance and Manual, among other tasks.

PROJECT – Multifamily building or development which may be subject to providing ADUs, based on requirements and guidelines established in the Charlottesville Zoning Code and in this Manual.

PROPERTY OWNER – Person or entity who holds the legal title (ex: deed) for the building or land containing a Project.

RENT LIMIT – The maximum monthly rent that can be charged for an Affordable Dwelling Unit.

SUBSIDIZED HOUSING – Affordable rental and ownership housing developed or operated by non-profit and for-profit developers using public subsidies.

UTILITY ALLOWANCE – A monthly allowance for utilities and services (excluding telephone services), if tenants are responsible for paying utilities. For properties in which tenants are responsible for paying utilities, the utility allowance will be deducted from the maximum rent to determine the monthly rent limit.